

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MARILUZ CARMONA,

Plaintiff,

-against-

GENE R. KAZLOW D/B/A KAZLOW
& KAZLOW, and XAVERIAN HIGH
SCHOOL,

Defendants.

-----X

ECF CASE

Case No. 16-cv-04723-MKB-RML

**DECLARATION OPPOSING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

NOW COMES Ahmad Keshavarz and pursuant to 28 U.S.C. § 1746, declares under penalty of perjury that the following is true and correct:

1. I am the attorney for Plaintiff in this action, and as such am familiar with the facts and circumstances set forth herein. I make this affidavit in opposition to Defendants' Motion for Summary Judgment. [DE 16].

2. Attached is a true and correct copy of the following: Plaintiff's Exhibit A- The September 4, 2015 Order denying Plaintiff's motion to vacate the default judgment.

3. Attached is a true and correct copy of the following: Plaintiff's Exhibit B- The Volunteer Lawyer for the Day limited notice of appearance.

4. Attached is a true and correct copy of the following: Plaintiff's Exhibit C- The Volunteer Lawyer for the Day limited scope retainer agreement.

5. Attached is a true and correct copy of the following: Plaintiff's Exhibit D- The E-Courts screens for the collection lawsuit.

6. Attached is a true and correct copy of the following: Plaintiff's Exhibit E- The February 6,

2016 Declaration of Mariluz Carmona in opposition to Defendants' Motion for Summary Judgment.

7. Attached is a true and correct copy of the following: Plaintiff's Exhibit F- The City of New York Office of Payroll Administration ledger reflecting the garnishments.

Dated: Brooklyn, New York
February 7, 2017

Respectfully submitted,

By:

/s/
Ahmad Keshavarz
The Law Office of Ahmad Keshavarz
ATTORNEY FOR PLAINTIFF
16 Court St., 26th Floor
Brooklyn, NY 11241-1026
Phone: (718) 522-7900
Fax: (877) 496-7809

EXHIBIT A

CIVIL COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.CV-044325-05

XAVERIAN HIGH SCHOOL

Plaintiff,

-against-

MARILUZ CARMONA

Defendants.

DECISION/ORDER

Present:

Hon. NOACH DEAR

Acting Supreme Court Justice

Notice of Motion and Affidavit.....	
Order to Show Cause and Affidavit.....	<u>1</u>
Answering Affidavits	<u>2</u>
Replying Affidavits	<u>3</u>
Exhibits	<u>4</u>
Other:	

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Defendant moves to vacate the default judgment entered against her on July 18, 2005.

Plaintiff opposes the motion.

Defendant states that she was not served properly and only became aware of the judgment when her wages were garnished. However, defendant does not specify the date that she learned of the garnishments. Defendant state that after reviewing the affidavit of service, she does not believe she was properly served because she only resided in the home with her two sons and there is no "relative" who would identify as "Ms. Carmona" who would have answered the door.

Plaintiff argues that defendant does not dispute residing at the address, nor does defendant address the follow up mailing delivered to the same address. Moreover, plaintiff states that defendant has failed to provide a meritorious defense to the action.

In order to successfully oppose a default judgment motion based on the failure to serve an answer, the defendant must demonstrate a reasonable excuse and provide a meritorious defense.

CPLR §5015(a)(1); *Belesi v Gifford*, 269 A.D.2d 552 (2d Dept. 2000). Defendant only makes non-conclusory allegations of improper service. Defendant simply states that there is no “relative” that would answer the door, but does not provide any additional information. Defendant does not address the mailing on May 10, 2005 that was allegedly mailed to the same address. Defendant does not provide any substantive information in opposition to the affidavit of service that would warrant the Court to order a traverse hearing. Moreover, if the Court were to establish that defendant had an excusable default for her failure to answer timely, defendant fails to provide a meritorious defense to the action. Defendant does not provide the Court with any information to refute the alleged debt. As such, defendant’s motion is DENIED.

The foregoing constitutes the decision and order of this Court.

ENTER,

Dated: September 4, 2015



A.J.S.C.

EXHIBIT B

Civil Court of the City of New York

County of Kings Part _____

Index Number 044325-05

Xaverian High School Petitioner(s)
against

**LAWYER FOR THE DAY
LIMITED NOTICE OF
APPEARANCE PURSUANT TO STUDENT
PRACTICE ORDER**

Mariluz Carmona Respondent(s)

I am an attorney admitted to practice in the State of New York. You are hereby notified that in the above-entitled action I, respectively, represent the Client, and supervise the Law Graduate listed below:

☐ Petitioner _____ ☒ Respondent Mariluz Carmona
On this _____ day of _____ in the PA Part.

My representation automatically terminates after today's appearance in the PA Part without any further act or communication by any party. My client has specifically agreed to this limited-service representation, and understands that my representation begins and ends today with my appearance in the PA Part and that s/he is participating in a special project.

BY: Sidney Cherubin

(Print Name)

ADDRESS: 44 Court Street #1206

Brooklyn NY 11201

TELEPHONE #: _____

10/20/15

(Date)

Sidney Cherubin
(Signature)

I am a Law Graduate awaiting admission to the New York State bar and acting pursuant to a Student Practice Order under the supervision of the Volunteer Lawyer for the Day Supervising Attorney to provide legal advice and limited scope representation in this matter.

My representation automatically terminates after today's appearance in the PA Part without any further act or communication by any party. My client has specifically agreed to this limited-service representation, and understands that my representation begins and ends today with my appearance in the PA Part and that s/he is participating in a special project.

BY: Samson Adler

(Print Name)

10/20/15

(Date)

Samson Adler
(Signature)

EXHIBIT C

VLFD PROJECT LIMITED SCOPE RETAINER AGREEMENT

This is a Limited Scope Retainer Agreement between Mari Luz Carmona
 (Name of Client) Samson Adler (Name of Law School Graduate), and Glenna Goldis (Name of Supervising Attorney).

Xaverian high school
 Case Name: v. Mari Luz Carmona

Index No.: 044325-05

The Law School Graduate, also called Law Graduate, holds a law degree but is not yet admitted to the New York Bar. The Law Graduate is, however, authorized by a court order to advise and represent Client in certain types of cases under the supervision of an attorney. The Supervising Attorney will oversee the work of the Law Graduate but will not directly represent Client.

1. Obligations of Law Graduate:

(A) Law Graduate agrees to represent Client in the Personal Appearance Part ONLY for today, 10/20/15. Law Graduate's services may include an evaluation of the strengths and weaknesses of the case, legal advice and negotiation of a settlement. Law Graduate's representation of Client ends after Law Graduate's appearance in the Personal Appearance Part on this day.

Law Graduate will not represent or assist Client in the future, even if the case is adjourned or settlement efforts continue past today.

(B) Law Graduate does not agree to represent Client beyond this date. If the case is adjourned for another court appearance in the Personal Appearance Part, Client may still participate in the Volunteer Lawyer For The Day (VLFD) Project. To obtain the representation of a VLFD- Law Graduate or Lawyer for a future appearance in the Personal Appearance Part, Client will have to enter a new retainer agreement.

(C) Client hereby agrees that he or she has been told that the representation is being provided in whole or in part, by a Law Graduate. Client further agrees to such representation, and understands that his or her agreement may be withdrawn at any time for any reason. If that happens, representation will not be provided.

2. Effective Date of Agreement: 10/20/15

3. Automatic Termination of Agreement: Law Graduate's representation of Client ends automatically after today's appearance in the Personal Appearance Part without any further act or communication by Law Graduate or Client.

4. Fee: Law Graduate's and Supervising Attorney's services under this agreement are free.

5. Obligations of Client:

(A) Client agrees to read the Client Intake Sheet and to make sure it is correct.

(B) Client agrees to cooperate with Law Graduate in this case.

(C) Client agrees to permit Law Graduate to discuss this case with the Supervising Attorney.

(D) Client is responsible for handling this case after today by himself or herself unless a new retainer agreement is signed on the next court date.

6. Client's Informed Consent:

Client has carefully read the Client Intake Sheet and this Agreement. Client has discussed both with Law Graduate. Client understands that this is an Agreement for limited-service representation that automatically stops at the end of Law Graduate's appearance in the Personal Appearance Part on today's date. Client further understands that the representation does not include trial, hearing or appellate work, even where a settlement cannot be reached between the parties. In the event of an adjournment or continuance, Law Graduate may offer Client materials and/or referrals to agencies, organizations, or other courts where appropriate.

Date: 10/20/15

Mari Luz Carmona
 (Name of Client)

Samson Adler
 (Name of Law Graduate)

Glenna Goldis
 (Name of Supervising Attorney)

Mari Luz Carmona
 (Signature of Client)

SA
 (Signature of Law Graduate)

Glenna
 (Signature of Supervising Attorney)

**VOLUNTEER LAWYER FOR THE DAY
CONSUMER CREDIT PROJECT
LIMITED SCOPE RETAINER AGREEMENT**



This is a Limited Scope Retainer Agreement between Mariluz Carmona and Sidney Cherubin
(Name of Client) (Name of Lawyer)

Case Name: Xaverian High School
v. Mariluz Carmona

Index No.: 04432

1. Obligations of Lawyer:

(A) Lawyer agrees to represent Client in the **Personal Appearance Part ONLY** for today, 10/14/15, ~~2014~~ Lawyer's services may include: talking about the strengths and weaknesses of the case; providing legal advice; and, attempting to negotiate a settlement. Lawyer will not represent defendant in a trial. Lawyer's representation of Client ends after Lawyer's appearance in the **Personal Appearance Part** on this day. Lawyer will not represent or help Client in the future, even if the case is adjourned or settlement efforts continue after today.

(B) Lawyer does not agree to represent Client after this date. If the case is adjourned for another court appearance in the **Personal Appearance Part**, Client may still participate in the **Volunteer Lawyer For The Day (VLFD) Project**. To have the representation of a VLFD- Lawyer for a future appearance in the **Personal Appearance Part**, Client will have to enter a new agreement.

2. Effective Date of Agreement: 10/14/15

3. Automatic Termination of Agreement: Lawyer's representation of Client ends automatically after today's appearance in the **Personal Appearance Part** without any further notice by Lawyer or Client.

4. Lawyer's Fee: Lawyer's services under this agreement are free.

5. Obligations of Client:

(A) Client agrees to read the Referral Sheet and to make sure it is correct.

(B) Client agrees to cooperate with Lawyer in this case.

(C) Client agrees to permit Lawyer to discuss this case with the VLFD Project's Coordinating Attorney.

(D) Client is responsible for handling this case after today by himself or herself.

6. Client's Informed Consent:

Client has carefully read the Referral Sheet and this Agreement. Client has discussed both with Lawyer. Client understands that this is an Agreement for limited-service representation that automatically stops at the end of Lawyer's appearance in the **Personal Appearance Part** on today's date. Client further understands the possible risks and benefits of limited service-representation described in this agreement. Client understands those possible risks and benefits, Client still wants to make this agreement with Lawyer.

Dated: 10/14/15

Mariluz Carmona
Name of Client
Mariluz Carmona
Signature of Client

Sidney Cherubin
Name of Lawyer
Sidney Cherubin
Signature of Lawyer

EXHIBIT D



New York State Unified Court System

WebCivil Local - Case Search Results

1 Case(s) Match Your Search. Page 1 of 1 pages

[\[New Search\]](#) [\[Edit Search\]](#)

Please scroll down to see more cases.

	Court	Index Number	Case Status	Plaintiff	Plaintiff Firm	Defendant	Defendant Firm	Appearance Date	Judge/Part	
1	Kings County Civil Court	CV-044325-05/KI	Post Disposition - Appeal Pending	XAVERIAN HIGH SCHOOL	KAZLOW & KAZLOW	MARILUZ CARMONA		10/20/2015	Honorable Noach Dear Part 34C - Consumer Debt	M

[\[New Search\]](#) [\[Edit Search\]](#)



New York State Unified Court System

WebCivil Local - Case Detail

Court: **Kings County Civil Court**
Index Number: **CV-044325-05/KI**
Case Name: **XAVERIAN HIGH SCHOOL vs. CARMONA, MARILUZ**
Case Type: **Civil**
Classification:
Filing Date: **05/16/2005**
Disposition Date: **03/10/2007**
Calendar Number:
Jury Demand: **No**
Judge Name:

Attorney/Firm(s) For Plaintiff - XAVERIAN HIGH SCHOOL:

KAZLOW & KAZLOW

Attorney Type: **Firm**

**237 WEST 35 ST., 14TH FLOOR
NEW YORK, New York 10001-
(212)947-2900**

Attorney/Firm(s) For Defendant - MARILUZ CARMONA:

Self-Represented Litigant

[Close](#)[Show All Appearances](#)[Show Motions](#)[Add to eTrack](#)



New York State Unified Court System

**WebCivil Local - Appearance Detail**

Court: **Kings County Civil Court**
Index Number: **CV-044325-05/KI**
Case Name: **XAVERIAN HIGH SCHOOL vs. CARMONA, MARILUZ**
Case Type: **Civil**

Appearance Information:

Appearance Date	Time	Purpose	Appearance Outcome	Judge / Part	Motion Seq
10/20/2015	09:30 AM	Motion	Submitted	Honorable Noach Dear Part 34C - Consumer Debt	002
10/14/2015	09:30 AM	Motion	Adjourned	Honorable Noach Dear Part 34C - Consumer Debt	002
07/15/2015	09:30 AM	Motion	Submitted	Honorable Noach Dear Part 34C - Consumer Debt	001
06/17/2015	09:30 AM	Motion	Adjourned	Honorable Noach Dear Part 34C - Consumer Debt	001
05/28/2015	09:30 AM	Motion	Adjourned	Honorable Noach Dear Part 34C - Consumer Debt	001

[Close](#)



New York State Unified Court System

*WebCivil Local - Motion Detail*

Court: **Kings County Civil Court**
Index Number: **CV-044325-05/KI**
Case Name: **XAVERIAN HIGH SCHOOL vs. MARILUZ CARMONA**
Case Type: **Civil**

Motion Information:

Motion Number	Date Filed	Filed By	Relief Sought	Nature of Decision/Judge	Decision Date	Order Signed Date
002	09/16/2015	Defendant	Reargue	Denied Before Judge: Honorable Noach Dear		
001	05/15/2015	Defendant	Vacate Judgment	Denied Before Judge: Honorable Noach Dear		

[Close](#)

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MARILUZ CARMONA,

Plaintiff,

-against-

GENE R. KAZLOW D/B/A KAZLOW
& KAZLOW, and XAVERIAN HIGH
SCHOOL,

Defendants.
-----X

ECF CASE

Case No. 16-cv-04723-MKB-RML

**AFFIDAVIT OF MARILUZ CARMONA IN OPPOSITION TO DEFENDANT KAZLOW'S
MOTION FOR SUMMARY JUDGMENT**

MARILUZ CARMONA, being duly sworn, deposes and says:

1. I am the Plaintiff in this action, and as such am familiar with the facts and circumstances set forth herein. I make this affidavit in opposition to Defendants' Motion for Summary Judgment. [DE 16].
2. On July 27, 2005, Xaverian High School, through its attorney Kazlow & Kazlow ("Kazlow"), initiated a lawsuit against me in Kings County Civil Court, styled *Xaverian High School v. Mariluz Carmona*, CV-44325-05/KI (the "collection case").
3. I was never served with a summons and complaint in that case, and a default judgment was therefore entered against me on July 18, 2005.
4. On March 31, 2015, Kazlow began garnishing my wages. This was the first time I learned about the default judgment.
5. On May 15, 2015, I filed a *pro se* Order to Show Cause ("OSC") to have the default judgment vacated for improper service. A judge signed my OSC that same day and issued a stay barring Kazlow from executing on my income.

6. On September 4, 2015 my May 15, 2015 OSC was denied.

7. I filed another OSC on September 16, 2015, seeking permission to re-argue the May 15, 2015 OSC. A judge signed the OSC that day and issued another stay of enforcement.

8. However, despite the September 16, 2015 Order staying enforcement of the sewer-service default judgment, Kazlow continued to garnish my income.

9. I was garnished three times while the September 16 stay was in effect: once on September 30, 2015 in the amount of \$149.65; once on October 15, 2015 in the amount of \$331.63; and once on October 30, 2015 in the amount of \$149.65. The total amount of the garnishments was \$630.93. Attached are true and correct copies of the paystubs reflecting those garnishments.

10. I am a low-income New Yorker and I desperately needed that money to pay my bills and feed my family.

11. On October 20, 2015 I went to a hearing for the collection case. I was represented by Sydney Cherubin, an attorney with the Volunteer Lawyer for a Day program.

12. For that day's hearing and for every other hearing when Mr. Cherubin assisted me in court, it was pursuant to a "Limited Scope Retainer Agreement" where we agreed that the scope of his representation was limited to that single hearing on that single day.

13. Attached are true and correct copies of two of those Limited Scope Retainer Agreements.

14. I was "*pro se*" during the collection lawsuit. No attorney filed a general appearance on my behalf.

15. In my November 16, 2015 paycheck my employer refunded \$149.65 the amount of one of the prior garnishments.

16. By the summer of 2016 I still had not been refunded for the September 30, 2015 and October 15, 2015 garnishments.

17. Kazlow only refunded all my money after my attorney filed this FDCPA lawsuit. The \$331.63 garnishment of October 15, 2015 was refunded to me through my employer on September 30, 2016. The \$149.65 payment of September 30, 2015 was refunded to me on October 12, 2016 via a check that Marshal Bienstock sent to my attorney.

18. I read paragraph 14 of Marshal Beinstock's affirmation dated December 22, 2016. I do not believe I ever called Mr. Beinstock's office.

19. Although Marshal Bienstock claims to have sent me a refund check on November 6, 2015 for the September 30, 2015 garnishment, I never received that check nor was informed that there was such a check mailed to me or to be mailed to me.

20. After I filed my FDCPA lawsuit, Mr. Beinssock mailed a check to my attorney Ahmad Keshavarz on or about September 14, 2016 for 149.65.

21. I never received any check from Mr. Beinstock prior to my filing of this FDCPA lawsuit.

22. The state court had granted me a stay of collections on September 16, 2015, and that stay continued until November 5, 2015 when I lost my motion to reargue.

23. Kazlow's wrongful garnishments during this stay period of September 16, 2015 to November 5, 2015 caused me severe anxiety and emotional distress.

24. During the wrongful garnishments in September and October, 2015 I was the sole source of support for both myself and my adult son who lives with me. My son is disabled. During the fall of 2015 (and through today) he was recovering from a major accident with substantial spinal cord damage.

25. The garnishments in violation of the September 16 OSC stay took me completely by surprise.

26. I had to borrow money in order to pay her rent and electricity, which I was loath to do.

27. Following the unlawful garnishments during the stay I went to the doctor several times for anxiety and high blood pressure, and was prescribed medication for both.

28. I lost my appetite, resulting in substantial weight loss.

29. I had great difficulty sleeping for weeks following the unlawful garnishments made during the stay.

30. For many months I felt the anxiety associated with the garnishments and had about four hours of sleep per night.


31. I suffered embarrassment at my job due to the garnishment and developed social anxiety. I am no longer able to socialize with my friends and family as I once did.

32. I had not realized it until it was pointed out to me today, but Mr. Kazlow also violated my prior order to show cause of May 15, 2015 which was in effect until September 4, 2015.

33. According to a printout from my employer's office during the pendency of this lawsuit, Mr. Kazlow garnished my paycheck on May 15, 2015, once on May 29, 2015, and once on June 15, 2015.

34. Attached is a true and correct copy of my June 15, 2015 paystub showing a garnishment of \$149.65 during the May 15, 2015 stay.

Sworn to before me this 6th day of February, 2017



Notary Public
FABIEN ROBLEY
Notary Public, State of New York
No. 02RO6153634
Qualified in Kings County
Commission Expires 10/10/20 *18*



MARI LUZ CARMONA

EXHIBIT F



City of New York
Office of Payroll Administration
Garnishment Information System

Employees' Garnishment Deduction Transaction History Details

Payroll Number: 744	Agency: DEPT OF ED PARA PROFESSIONALS	Payroll Distribution Code: 21K540
Creditor: XAVERIAN HIGH SCHOOL	Debtor: Mariluz Garmona	Index Number: 44325/05

Judgment ID	Social Security #	Check Number	Pay Date	Deduction Amount	Misc Fee Paid	Poundage Paid	Interest Paid	Principal Paid	Status
139004	XXX-XX-3195	Z45140287	03/31/2015	\$145.26	\$37.09	\$7.26	\$100.91	\$0.00	Paid to Collector - Check# 40048
		Z45277426	04/15/2015	\$145.26	\$0.00	\$7.26	\$138.00	\$0.00	Paid to Collector - Check# 40084
		Z45423176	04/30/2015	\$145.26	\$0.00	\$7.26	\$138.00	\$0.00	Paid to Collector - Check# 40084
		Z45557256	05/15/2015	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8117 Refund - Chk# Z 50257803 - \$149.65
		Z45666269	05/29/2015	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8117 Refund - Chk# Z 45909453 - \$149.65
		Z45802837	06/15/2015	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8117 Refund - Chk# Z 46702436 - \$149.65
		Z46817210	09/30/2015	\$149.65	\$0.00	\$7.48	\$142.17	\$0.00	Paid to Collector - Check# 40239
		Z46949877	10/15/2015	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8117 Refund - Chk# Z 50257803 - \$331.63
		Z47082249	10/30/2015	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8117 Refund - Chk# Z 47238873 - \$149.65
		Z48360034	03/15/2016	\$149.65	\$0.00	\$7.48	\$142.17	\$0.00	Paid to Collector - Check# 40451
		Z48501438	03/31/2016	\$149.65	\$0.00	\$7.48	\$142.17	\$0.00	Paid to Collector - Check# 40451
		Z48644190	04/15/2016	\$149.65	\$0.00	\$7.48	\$142.17	\$0.00	Paid to Collector - Check# 40488
		Z48788366	04/29/2016	\$149.65	\$0.00	\$7.48	\$142.17	\$0.00	Paid to Collector - Check# 40488
		Z48932704	05/16/2016	\$154.87	\$0.00	\$7.74	\$147.13	\$0.00	Paid to Collector - Check# 40521
		Z49074906	05/31/2016	\$154.87	\$0.00	\$7.74	\$147.13	\$0.00	Paid to Collector - Check# 40521
		Z49188484	06/15/2016	\$154.87	\$0.00	\$7.74	\$147.13	\$0.00	Paid to Collector - Check# 40554
		Z49301298	06/30/2016	\$154.87	\$0.00	\$7.74	\$147.13	\$0.00	Paid to Collector - Check# 40554
		Z49431622	07/15/2016	\$154.87	\$0.00	\$7.74	\$147.13	\$0.00	Paid to Collector - Check# 40591
		Z49553280	07/29/2016	\$154.87	\$0.00	\$7.74	\$147.13	\$0.00	Paid to Collector - Check# 40591
		Z49663663	08/15/2016	\$154.87	\$0.00	\$7.74	\$147.13	\$0.00	Paid to Collector - Check# 40631
		Z49773750	08/31/2016	\$154.87	\$0.00	\$7.74	\$147.13	\$0.00	Paid to Collector - Check# 40631